

06/30/2004	<u>90</u>	Court Certificate of Mailing of <u>86</u> Order dated 6/29/04 Re: <u>85</u> Notice of Appeal and <u>89</u> Order to Show Cause Dated 6/30/04 Regarding <u>79</u> Order Dated June 10, 2004 Regarding <u>57</u> First Fee Application For Compensation filed by Attorney Francis Lafayette. (sas, usbc) (Entered: 06/30/2004)
06/30/2004	<u>91</u>	Status Report <i>with c/s</i> (Re: <u>79</u> Order on Application for Compensation). Filed by Debtor Hector L. Rolon (Lafayette, Francis) (Entered: 06/30/2004)
07/01/2004	<u>92</u>	Motion to Reconsider (Re: <u>86</u> Order) Filed by Debtor Hector L. Rolon (Lafayette, Francis) (Entered: 07/01/2004)
07/01/2004	<u>93</u>	Brief/Memorandum In Support Of (Re: <u>92</u> Motion to Reconsider). Filed by Debtor Hector L. Rolon (Lafayette, Francis) (Entered: 07/01/2004)
07/07/2004	<u>94</u>	Order dated 7/7/04 RE: <u>89</u> Order to Show Cause Dated 6/30/04. Hearing scheduled for 7/14/04 is canceled. (ps, usbc) (Entered: 07/07/2004)
07/08/2004	<u>95</u>	Memorandum of Decision Dated 7/8/04 Regarding <u>92</u> Motion to Reconsider <u>86</u> Order Filed by Attorney Francis Lafayette. A SEPARATE ORDER SHALL ISSUE. (sas, usbc) (Entered: 07/08/2004)
07/08/2004	<u>96</u>	Order Dated 7/8/04 Denying <u>92</u> Motion to Reconsider <u>86</u> Order Filed by Attorney Francis Lafayette. (sas, usbc) (Entered: 07/08/2004)
07/08/2004	<u>97</u>	Court Certificate of Mailing of <u>95</u> Memorandum of Decision and <u>96</u> Order Regarding <u>92</u> Motion to Reconsider <u>86</u> Order Filed by Attorney Francis Lafayette. (sas, usbc) (Entered: 07/08/2004)
07/09/2004	<u>98</u>	BNC Certificate of Mailing - PDF Document. Service Date 07/09/2004. (Related Doc # <u>94</u>) (Admin.) (Entered: 07/10/2004)
07/17/2004	<u>99</u>	Notice of Appeal. Fee Amount \$250 Filed by Debtor Hector L. Rolon (RE: <u>95</u> Memorandum of Decision, <u>96</u> Order on Motion To Reconsider). Appellant Designation due by 7/27/2004. Complied Records Due by 8/11/2004. Transmission of Designation Due by 8/16/2004. (Lafayette, Francis) (Entered: 07/17/2004)
07/18/2004	100	Receipt of filing fee for Notice of Appeal(02-45994) [appeal,ntcapl] (250.00). Receipt Number 0101B786680, amount \$ 250.00. (U.S. Treasury) (Entered: 07/18/2004)
07/18/2004	<u>101</u>	Election of Appeal to District Court Filed by Debtor Hector L. Rolon

		(RE: <u>99</u> Notice of Appeal,). (Lafayette, Francis) (Entered: 07/18/2004)
07/19/2004	<u>102</u>	Notice of Appeal to District Court Re: <u>99</u> Notice of Appeal Filed by Francis Lafayette Counsel to Debtor Hector L. Rolon (Re: <u>95</u> Memorandum of Decision, <u>96</u> Order on Motion To Reconsider). (ab, usbc) (Entered: 07/19/2004)
07/19/2004	<u>103</u>	Court Certificate of Mailing Re: <u>102</u> Notice of Appeal to District Court. (ab, usbc) (Entered: 07/19/2004)
07/24/2004	<u>104</u>	Certificate of Compliance <i>with c/s</i> (Re: <u>79</u> Order on Application for Compensation). Filed by Debtor Hector L. Rolon (Lafayette, Francis) (Entered: 07/24/2004)
07/27/2004	<u>105</u>	Appellant Designation of Contents For Inclusion in Record On Appeal Filed by Debtor Hector L. Rolon (RE: <u>99</u> Notice of Appeal,). Appellee designation due by 8/6/2004. (Lafayette, Francis) (Entered: 07/27/2004)
08/11/2004		Appellant's Designated Documents to Be Included in the Record on Appeal RE: <u>99</u> Notice of Appeal. (ps, usbc) (Entered: 08/11/2004)
08/17/2004	<u>106</u>	Transmittal of Record on Appeal to U.S. District Court RE: <u>99</u> Notice of Appeal filed by Attorney Francis Lafayette. (ps, usbc) (Entered: 08/17/2004)
08/19/2004	<u>107</u>	Notice of Docketing Record on Appeal. Civil Action Number: 04-30155-MAP Filed by Mary Finn (District of MA) RE: <u>99</u> Notice of Appeal.(ps, usbc) (Entered: 08/20/2004)
09/15/2004	<u>108</u>	<i>Motion to Refer Debtor's Attorney to District Court for Disciplinary Proceedings Pursuant to Local Rule 2090-2 and Rule 83.6(4) and (5) of the Local Rules of the United States District Court for the District of Massachusetts</i> Filed by Interested Party United States Trustee (Meunier, Stephen) (Entered: 09/15/2004)

PACER Service Center			
Transaction Receipt			
09/23/2004 12:54:49			
PACER Login:	rk0068	Client Code:	lmb
Description:	Docket Report	Case Number:	02-45994

United States Bankruptcy Court

District of Massachusetts

In re:)	
JOSEPH L. LaFRANCE,	)	Chapter 13
Debtor	)	Case No. 02-42450-HJB
)	
In re:)	
MARTA L. OYOLA,	)	Chapter 13
Debtor	)	Case No. 02-45398-HJB
)	
In re:)	
HECTOR L. ROLON,	)	Chapter 13
Debtor	)	Case No. 02-45994-HJB
)	
In re:)	
KATHILEEN M. DAIGNEAULT,	)	Chapter 13
Debtor	)	Case No. 02-46689-HJB
)	
In re:)	
PETER AND DENISE CACI,	)	Chapter 7
Debtor	)	Case No. 02-47249-HJB
)	

In re:)	
)	
MARK BENNETT and	)	Chapter 13
ANGELA BENNETT)	
	)	Case No. 03-40074-HJB
Debtor)	
)	
In re:)	
)	
STEFAN DAVIS,	)	Chapter 13
)	
Debtor	)	Case No. 03-40199-HJB
)	

MEMORANDUM OF DECISION

Before the Court is a "Motion for Reconsideration and to Allow Late Filing of Appeal on Grounds of Excusable Neglect (Fed. R. Bankr. P. 8002(c))" (the "Motion") filed by Attorney Francis Lafayette ("Attorney Lafayette"). The Motion does present an ironic picture, in that it seeks leave to file late an appeal of this Court's order of June 10, 2004 which, in turn, took action to ameliorate a variety of similar acts of neglect by Attorney Lafayette. See In re LaFrance, et. al., 2004 WL 1376363 (Bankr. D. Mass.).

As in the underlying case(s), Attorney Lafayette cites his allegedly poor physical condition and the side effects of medication as cause for his having failed to meet this important deadline. In the underlying cases, he claimed to have suffered from dental and back problems. Here, he claims to suffer from diabetes and polyneuropathy.


As in the LaFrance decision, this Court finds the existence of the alleged illnesses insufficient to justify Attorney Lafayette's failure to timely act. It is unlikely that either or any of these alleged conditions interfered in any material way with his ability to file a timely notice of appeal. This Court has checked with the records of the Clerk's Office and is advised (and takes judicial notice) that during the period of June 10, 2004 to June 21, 2004 in which the filing would have been timely, Attorney Lafayette:

1. appeared before this Court on June 16, 2004 in five (5) separate hearings; and
2. electronically filed eighty three (83) pleadings, five (5) of which were new bankruptcy cases, spread throughout the relevant period.¹

A copy of that listing is attached hereto.

In light of the foregoing, this Court finds that Attorney Lafayette's failure to timely file his notice of appeal was within his control and resulted from his own inexcusable negligence. The Motion will, accordingly, be denied. A separate Order shall issue.

DATED: July 8, 2004


Henry J. Boroff
United States Bankruptcy Judge

cc: Francis Lafayette, Esq.
Denise Pappalardo, Chapter 13 trustee
United States trustee
Debtors

¹Eighteen were filed on weekend days.

Report of Filings by Attorney Frances Lafayette
June 10, 2004 through June 21, 2004

June 10, 2004

03-44298

53	Motion to Reconsider	Bennett
54	Declaration Re: Electronic Filing	Bennett

03-45556

35	Motion to Reconsider	Gorski
36	Declaration Re: Electronic Filing	Gorski

04-42668

11	Schedules A-J	Adasiewicz
12	Chapter 13 Agreement between debtor and counsel	Adasiewicz
13	Chapter 13 Plan	Adasiewicz
14	Motion to Extend	Adasiewicz
15	Declaration Re: Electronic Filing	Adasiewicz

04-43304

1	Voluntary Petition (Chapter 13)(Attorney)	Pascale
3	Statement of Social Security Number(s)	Pascale
4	Declaration Re: Electronic Filing	Pascale

04-43338

1	Voluntary Petition (Chapter 13)(Attorney)	Cabrera
2	Statement of Social Security Number(s)	Cabrera
3	Declaration Re: Electronic Filing	Cabrera

Total Filings on: June 10, 2004 15

June 11, 2004

03-46928

24	Motion to Convert Case to Chapter 7	Moccio
25	Declaration Re: Electronic Filing	Moccio

03-47195

37	Opposition	Kelly
38	Opposition	Kelly

Total Filings on: June 11, 2004 4

June 13, 2004

04-43053

8	Schedules A-J	McCarthy
9	Chapter 13 Plan	McCarthy
10	Motion to Extend	McCarthy
11	Chapter 13 Agreement between debtor and counsel	McCarthy
12	Declaration Re: Electronic Filing	McCarthy

Total Filings on: **June 13, 2004** **5**

June 14, 2004

02-45468

123 Stipulation

Babb

04-43026

9 Schedules A-J

Austin

10 Declaration Re: Electronic Filing

Austin

04-43053

13 Notice

McCarthy

Total Filings on: June 14, 2004 4

~~June 15, 2004~~

02-47473

73 Opposition

Martin

04-41885

19 Amended Chapter 13 Plan

Mulverhill

20 Motion to Modify Plan

Mulverhill

21 Amended Schedules

Mulverhill

22 Motion to Amend Schedules

Mulverhill

23 Declaration Re: Electronic Filing

Mulverhill

Total Filings on: June 15, 2004 6

June 16, 2004**02-44216**

50 Chapter 13 Trustee's Motion for Order Dismissing Case Ranger

03-47113

52 Opposition Dion

53 Opposition Dion

04-04300

14 Stipulation Moreno

04-40724

65 Motion to Extend Buckert

66 Motion to Extend Buckert

67 Exhibit A Buckert

68 Amended Schedules Buckert

69 Motion to Amend Buckert

04-42835

8 Notice Yankson

04-43426

1 Voluntary Petition (Chapter 7)(Attorney) Wheeler

3 Statement of Social Security Number(s) Wheeler

4 Declaration Re: Electronic Filing Wheeler

04-43440

1 Voluntary Petition (Chapter 13)(Attorney) Arnold

2 Chapter 13 Plan Arnold

4 Statement of Social Security Number(s) Arnold

5 Declaration Re: Electronic Filing Arnold

 Total Filings on: June 16, 2004 17

June 17, 2004

03-46552

73	Amended Chapter 13 Plan	Bouffard
74	Motion to Amend	Bouffard
75	Amended Schedules	Bouffard
76	Motion to Amend	Bouffard
77	Certificate of Service	Bouffard
78	Declaration Re: Electronic Filing	Bouffard

04-40833

21	Opposition	Fenner
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Total Filings on: June 17, 2004 7

June 18, 2004

04-41219

41 Stipulation
42 Motion to Approve

Kelley
Kelley

Total Filings on: **June 18, 2004** **2**

June 19, 2004**03-46346**

30	Objection to Claim	Provost-Lamy
31	Declaration Re: Electronic Filing	Provost-Lamy

03-46928

31	Notice of No Post Petition Creditors	Moccio
32	Declaration Re: Electronic Filing	Moccio

04-42636

12	Amended Chapter 13 Plan	Rolo
13	Motion to Amend	Rolo
14	Amended Schedules	Rolo
15	Motion to Amend Schedules	Rolo
16	Declaration Re: Electronic Filing	Rolo

04-43537

1	Voluntary Petition (Chapter 7)(Attorney)	Woods
3	Statement of Social Security Number(s)	Woods
4	Declaration Re: Electronic Filing	Woods

Total Filings on: **June 19, 2004** **12**

June 20, 2004

04-40809

20 Opposition

Price

Total Filings on: June 20, 2004 1

June 21, 2004

01-43979

54 Notice of Post Petition Creditors
55 Statement of Intent
56 Declaration Re: Electronic Filing

Moreno
Moreno
Moreno

02-40021

73 Motion to Incur Debt

Barrett

02-45958

77 Opposition

Livingstone

02-46690

69 Motion to Continue/Reschedule Hearing
71 Opposition
72 Certificate of Service

Knoll
Knoll
Knoll

04-40249

33 Certificate of Service

Spears

04-41129

13 Motion to Appear Telephonically

Beaucage

Total Filings on: **June 21, 2004** 10

Total Filings for this report: 83

United States Bankruptcy Court
District of Massachusetts

In re:

JOSEPH L. LaFRANCE,
Debtor

Chapter 13

Case No. 02-42450-HJB

in re:

MARTA L. OYOLA,
Debtor

Chapter 13

Case No. 02-45398-HJB

In re:

HECTOR L. ROLON,
Debtor

Chapter 13

Case No. 02-45994-HJB

In re:

KATHLEEN M. DAIGNEAULT,
Debtor

Chapter 13

Case No. 02-46689-HJB

In re:

PETER AND DENISE CACI,
Debtor

Chapter 7

Case No. 02-47249

13-7(b) in all cases which Attorney Lafayette may hereafter file in this District until further court order. This Court's actions are authorized by 28 U.S.C. §157(b)(2)(A) and (B), 11 U.S.C. §§ 327, 328 and 329 and MLRB 13-7(b).

I. FACT PATTERNS

The relevant facts are either: (1) not materially disputed, being drawn from the docket or pleadings of each relevant case, or from testimony or supplemental pleadings provided by Attorney Lafayette as described below; or (2) constitute this Court's findings of fact, pursuant to Fed. R. Bankr. P. 7052, as made applicable by Fed. R. Bankr. P. 9014, based on the evidentiary hearings described below.

A. Joseph L. LaFrance

Joseph L. LaFrance filed a Chapter 13 case on April 19, 2002 and was represented by Attorney Lafayette. Shortly thereafter, Attorney Lafayette filed a "Disclosure of Compensation of Attorney for Debtor," as required by Federal Rule of Bankruptcy Procedure 2016(b) (the "LaFrance Fee Disclosure"). According to Paragraph 1 of the LaFrance Fee Disclosure, Attorney Lafayette agreed to charge \$2,500 for preconfirmation and \$500 for postconfirmation work, of which Attorney Lafayette had received \$415 on account. The balance due was set forth as follows:

\$3,000 less \$415 paid leaving a balance of \$2,085 (pre-confirmation and \$500.00 post-confirmation) for services described in (4)(a)-(c) below plus copies of @ \$.15 per page; incoming telecopier transmissions of \$.15/page; auto mileage at the rate set forth from time to time by 41 CFR sec. 301-4.2 (\$.31 per mile); costs incurred for parking and out-of-pocket disbursements made by Attorney, including, but not limited to, filing and witness fees, service of process fees, expenses of depositions, investigative expenses,